

Department of Veterans Affairs

§3.661

of another person ceased prior to October 1, 1982, due to marriage, annulment, divorce, or death, the award shall be reduced or discontinued effective the last day of the calendar year in which the increase occurred or dependency ceased. Except as noted in this subparagraph for section 306 or old-law pension, where the dependency of another person ceased on or after October 1, 1982, due to marriage, annulment, divorce or death, the reduction or discontinuance shall be effective the last day of the month in which dependency ceased.

(Authority: 38 U.S.C. 5112(b))

(3) *Overpayments.* Overpayments created by retroactive discontinuance of benefits will be subject to recovery if not waived. Where dependency and indemnity compensation was being paid to two parents living together, an overpayment will be established on the award to each parent.

(b) *Award or increase; income.* Where pension or dependency and indemnity compensation was not paid for a particular 12-month annualization period because the claim was disallowed, an award was deferred under §3.260(b) or §3.271(f), payments were discontinued or made at a lower rate based on anticipated or actual income, benefits otherwise payable may be authorized commencing the first of a 12-month annualization period as provided in this paragraph. In all other cases, benefits may not be authorized for any period prior to the date of receipt of a new claim.

(1) *Anticipated income.* Where payments were not made or were made at a lower rate because of anticipated income, pension or dependency and indemnity compensation may be awarded or increased in accordance with the facts found but not earlier than the beginning of the appropriate 12-month annualization period if satisfactory evidence is received within the same or the next calendar year.

(Authority: 38 U.S.C. 5110(h))

(2) *Actual income.* Where the claimant's actual income did not permit payment, or payment was made at a lower rate, for a given 12-month annualization period, pension or de-

pendency and indemnity compensation may be awarded or increased, effective the beginning of the next 12-month annualization period, if satisfactory evidence is received within that period.

(c) *Increases; change in status.* Where there is change in the payee's marital status or status of dependents which would permit payment at a higher rate and the change in status is by reason of the claimant's marriage or birth or adoption of a child, the effective date of the increase will be the date of the event if the required evidence is received within 1 year of the event. Where there is a change in dependency status for any reason other than marriage, or the birth or adoption of a child, which would permit payment at a higher rate, the increased rate will be effective the date of receipt of notice constituting an informal claim if the required evidence is received within 1 year of Department of Veterans Affairs request. The rate payable for each period will be determined, as provided in §§3.260(f) or 3.273(c). (See §3.651 as to increase due to termination of payments to another payee. Also see §3.667 as to increase based on school attendance.)

(d) *Corpus of estate; net worth.* Where a claim has been finally disallowed or terminated because of the corpus of estate and net worth provisions of §§3.263 or 3.274 and entitlement is established on the basis of a reduction in estate or net worth, or a change in circumstances such as health, acquisition of a dependent, or increased rate of depletion of the estate, benefits or increased benefits will not be paid for any period prior to the date of receipt of a new claim.

[30 FR 3354, Mar. 12, 1965, as amended at 44 FR 45942, Aug. 6, 1979; 48 FR 34473, July 29, 1983; 57 FR 59300, Dec. 15, 1992]

§3.661 Eligibility Verification Reports.

(a) *Determination and entitlement.* (1) Where the report shows a change in income, net worth, marital status, status of dependents or change in circumstances affecting the application of the net worth provisions, the award will be adjusted in accordance with §3.660(a)(2).

(2) Where there is doubt as to the extent of anticipated income payment of pension or dependency and indemnity

compensation will be authorized at the lowest appropriate rate or will be withheld, as provided in § 3.260(b) or § 3.271 (f).

(b) *Failure to return report*—(1) *Section 306 and old-law pension*—(i) *Discontinuance*. Discontinuance of old-law or section 306 pension shall be effective the last day of the calendar year for which income (and net worth in a section 306 pension case) was to be reported.

(ii) *Resumption of benefits*. Payment of old-law or section 306 pension may be resumed, if otherwise in order, from the date of last payment if evidence of entitlement is received within the calendar year following the calendar year for which income (and net worth in a section 306 pension case) was to be reported; otherwise pension may not be paid for any period prior to the date of receipt of a new claim.

(2) *Improved pension and dependency and indemnity compensation*—(i) *Discontinuance*. Discontinuance of dependency and indemnity compensation (DIC) or improved pension shall be effective the first day of the 12-month annualization period for which income (and net worth in an improved pension case) was to be reported or the effective date of the award, whichever is the later date.

(ii) *Adjustment of overpayment*. If evidence of entitlement to improved pension or DIC for any period for which payment of improved pension or DIC was discontinued for failure to file an Eligibility Verification Report is received at any time, payment of improved pension or DIC shall be awarded for the period of entitlement for which benefits were discontinued for failure to file an Eligibility Verification Report.

(iii) *Resumption of benefits*. Payment of improved pension and DIC may be resumed, if otherwise in order, from the date of last payment if evidence of entitlement is received within the 12-month annualization period following the 12-month annualization period for which income (and net worth in an improved pension case) was to be reported; otherwise pension or DIC may

not be paid for any period prior to receipt of a new claim.

(Authority: 38 U.S.C. 501)

[30 FR 3355, Mar. 12, 1965, as amended at 44 FR 45942, Aug. 6, 1979; 46 FR 55098, Nov. 6, 1981; 57 FR 59300, Dec. 15, 1992]

§§ 3.662–3.664 [Reserved]

§ 3.665 Incarcerated beneficiaries and fugitive felons—compensation.

(a) *General*. Any person specified in paragraph (c) of this section who is incarcerated in a Federal, State or local penal institution in excess of 60 days for conviction of a felony will not be paid compensation or dependency and indemnity compensation (DIC) in excess of the amount specified in paragraph (d) of this section beginning on the 61st day of incarceration. VA will inform a person whose benefits are subject to this reduction of the rights of the person's dependents to an apportionment while the person is incarcerated, and the conditions under which payments to the person may be resumed upon release from incarceration. In addition, VA will also notify the person's dependents of their right to an apportionment if the VA is aware of their existence and can obtain their addresses. However, no apportionment will be made if the veteran or the dependent is a fugitive felon as defined in paragraph (n) of this section.

(b) *Definitions*. For the purposes of this section the term *compensation* includes disability compensation under 38 U.S.C. 1151. The term *dependency and indemnity compensation* (DIC) includes death compensation payable under 38 U.S.C. 1121 or 1141, death compensation and DIC payable under 38 U.S.C. 1151, and any benefit payable under chapter 13 of title 38, United States Code. The term *release from incarceration* includes participation in a work release or half-way house program, parole, and completion of sentence. For purposes of this section, a felony is any offense punishable by death or imprisonment for a term exceeding 1 year, unless specifically categorized as a misdemeanor under the law of the prosecuting jurisdiction.

(c) *Applicability*. The provisions of paragraph (a) of this section are applicable to the following persons: